

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Joint Meeting of Milpitas City Council and the Public  
Financing Authority  
**Date:** Tuesday, February 17, 2015  
**Time:** 7:00 PM  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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### CALL TO ORDER

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

**PRESENT:** Mayor Esteves, Councilmembers Giordano and Grilli

**ABSENT:** Vice Mayor Montano and Councilmember Barbadillo were absent at roll call and arrived later for closed session.

### CLOSED SESSION

City Council convened in Closed Session to discuss litigation matters.

City Council then convened in Open Session at 7:14 PM.

### ANNOUNCEMENT

None out of Closed Session.

### PLEDGE

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

### INVOCATION

Vice Mayor Montano read a passage from the bible to start the meeting.

### MEETING MINUTES

Motion: to approve the minutes of February 3, 2015 City Council meeting

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

### SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for February and March 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

### PRESENTATION

Mayor Esteves presented:

- Certificate of Appreciation to Engineers 4 Tomorrow. Ms. Rohini Mankee, President of the group, came to the podium with three board members to accept the recognition of the non-profit group promoting STEM education. She thanked Vice Mayor Montano who is a board member. A short video about their program was shown overhead.
- Recognition of the Milpitas 2015 "Artist of the Year" Joe Santoro of South Bay School of Music.

### PUBLIC FORUM

Robert Marini, Milpitas resident, responded to information given to him at the last City Council meeting and commented on real estate development, the landfill site, current drought, and rates paid for utility service in Milpitas.

Thelma Batila, Milpitas resident, sought support for the “Kids and Adults Day” event planned this year in Milpitas for challenged children, which was not a fundraising event. It was scheduled on Saturday, April 25, 2015 at the Milpitas Sports Center, from 2 – 5 pm. She asked the City Council to provide city support and put her request on the next agenda March 3.

In response, Mayor Esteves asked for Council consideration on the next agenda.

Rob Means, 1421 Yellowstone resident, talked about a People’s Climate March held in New York City in September last fall regarding climate change, and changes necessary in our world.

Voltaire Montemayor, Milpitas resident, supported artists and sports. He remarked on those who received the presentations earlier.

## **ANNOUNCEMENTS**

Mayor Esteves noted Asian New Year being celebrated this week and this month, and he offered greetings to the Asian community of Milpitas.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the agenda, as amended

City Manager Tom Williams asked to continue the report on crime data (Item No. 6) to the next meeting agenda on March 3.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Motion: to approve the Consent Calendar items (noted by \*asterisk), as amended

Vice Mayor Montano requested to remove items no. 7 (Street Resurfacing), no. 12 (HT Harvey & Assoc. agreement) and no. 13 (agreement with NBS) from the consent calendar.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

### **\* 3. Commission Appointments**

Approved the following recommendations from the Mayor:

Arts Commission: Re-appointed three Commissioners Larry Voellger, Cyd Mathias, and Bob Gill as regular members to terms that expire in October of 2017.

Bicycle Pedestrian Advisory Commission: Appointed Vice Mayor Montano to serve as the Council liaison to this Commission.

Community Advisory Commission: Re-appointed Jose Rosario as a regular member to a term that will expire in January 2019.

Recycling and Source Reduction Advisory Commission: Appointed school district staff Brian Shreve as the MUSD school representative on the RSRAC to a seat (currently vacant) with a term that will expire in October 2015.

Senior Advisory Commission: Re-appointed Jae Kuk Wi as a regular member to a term that will expire in December 2016.

Telecommunications Commission: Re-appointed Kurt Bohan as a regular member to a term that will expire in January 2017.

- \* 4. Arts and Culture In-Kind Grant FY 2014-15      Approved the Milpitas Arts and Culture Grant awarded to the Fil-Am for in-kind performance space and City staff support.
- \* 8. Resolution      Adopted Resolution No. 8448 amending the Classification Plan to eliminate two Assistant Civil Engineer positions and to add one Associate Civil Engineer and One Engineering Permit Technician position within the Land Development - Engineering Department.
- \* 9. Resolution      Adopted Resolution No. 8449 amending the Classification Plan to establish a new classification of a Building Inspection Manager in the Building & Safety Department with an annual salary range of \$109,034 - \$132,533. Authorized funding a vacant Building Inspector position with an annual salary range of \$84,396 - \$102,583.
- \*10. Resolution      Adopted Resolution No. 8450 amending the Classification Plan to establish a new classification of a Marketing Assistant in the Recreation Services Department for an annual salary range of \$57,495 - \$69,886.
- \*11. Main Street Pavement      Approved plans and specifications for Main Street Pavement Reconstruction Project No. 4277 and authorize advertisement for bid proposals.
- \*14. Amendment to Agreement with Norma Nelson      Approved Amendment No. 2 to the agreement with Norma Nelson for services as a Buyer for the City in the not-to-exceed amount of \$19,800 00 for the period from February 27, 2015 to June 30, 2015.

## **PUBLIC HEARING**

- 1. Development Agreement with SCS/Citation, et al.      Planning Director Steve McHarris presented a recap from the City Council meeting of February 3 on the development agreement proposed for the Citation projects in the Transit Area Specific Plan (TASP) area: Amalfi I, Amalfi II, and The Edge. Fees were requested to be deferred for the development impact fees. Three projects by Citation would be affected in the development agreement for newly constructed apartments in the Transit Area with commercial uses as part of the projects.

Mayor Esteves asked staff to explain benefits of the agreement to the community and to the developer. Staff listed six fiscal benefits and four community benefits.

Councilmember Barbadillo asked if the impact fees were the main issue. He identified \$32,781 as the required developer's fee per new residential unit, approved in March 2014 when the TASP fees were reviewed and changed. Mr. McHarris explained much TASP fee history. The City Attorney responded on terms including the five year length of the proposed development agreement and for established fees for the Citation projects.

Councilmember Giordano remarked that this was not precedent setting, which staff confirmed. The City had executed several development agreements over the years. It was more cost effective to the city and its residents, which she viewed as a "win-win." She mentioned the development of Parktown where she lived. She favored the proposed agreement for Citation.

Councilmember Grilli stated that fees were increased last year due to anticipated lower density while this project would bring much higher density to the TASP area, which staff confirmed. She asked about the pedestrian overcrossing, which would cross from the new development over Montague Expressway – if grant funds were awarded – to allow those residents to easily access the new BART station.

Vice Mayor Montano commented on the total reduced fees the city would receive. She asked when the BART would be ready to open and staff replied that Santa Clara Valley Transportation Agency said in 2017. The City Manager responded further on the status of

the anticipated pedestrian bridge, and the funds sought to get it built. Ms. Montano questioned whether the bridge would be built ultimately.

Councilmember Barbadillo read aloud from the Planning Commission report in January. The City Attorney responded by describing the terms written in the proposed development agreement (not contemplating any reimbursement steps).

Councilmember Grilli remarked that another developer could propose a lower density project than this one yielding even fewer total TASP fees.

Vice Mayor Montano asked whether the City had given other developers such a reduction in fees. In the TASP, staff replied this was the first developer agreement, while there had been such agreements for development in the MidTown and other areas.

Mayor Esteves asked when fees would be collected, at the time of the Certificate of Occupancy or at the date of building permit issuance. He expressed concerns about timing, amount collected, treatment of all building applicants, and this project.

Next, the Mayor invited the project applicant to address the City Council. Mr. Mark Tiernan, representing developer SCS/Citation, gave reasons to support the three projects, which take a lot of capital. He discussed cost for each of the three Citation projects, totaling over \$270 million to build. The developer very much wanted to build in the TASP area at the higher densities, as identified in the plan.

Councilmember Barbadillo referred to the vesting tentative map for this project, and remarked on state and local government codes that affected the timing of the fees. He asked if they city received any objection from Citation on the fees. Mr. Ogaz said the city received a letter in the last few days, and probably by e-mail to staff in the past.

Next, Mayor Esteves re-opened the public hearing and invited speakers.

Robert Marini, resident, remarked on the non-benefits and disadvantages to this type of projects. He quoted amounts of water that would be needed for 1000 units built, causing cost increases for utilities even further and more traffic, not less.

Voltaire Montemayor, resident, said this was a great project, with benefits to the City. It would have a positive impact, near the new BART station.

Liz Ainsworth, Milpitas Chamber of Commerce President, referred to a written statement issued today by her organization in a letter to the City Council. The Chamber sought a good environment for people moving into Milpitas, including good commercial retail space at residential units next to the new BART station. She was positive about the proposed development.

Jim Sullivan, SCS real estate company, responded to several comments by Council member Barbadillo on the prior three-party cost sharing agreement on some very specific matters. He described the no cost-sharing of many improvements his company was building near this project site. He responded to the Mayor on a developer benefitting from the front end infrastructure building. He responded to the Vice Mayor that on the widening of Montague, he was working with the County on that step now. For The Edge project, he was asked to start this one quickly, when it was approved.

Steve Siddell, Milpitas resident, said that Milpitas needed to compete to attract residents and new development into the City. He urged Council to be careful about "one size fits all" approach to issues like this, and that the developer may go elsewhere when competing. He admired City staff for their hard work on this type of planning,

Tom Valore, Milpitas resident, saw the loss of \$3.8 million to the City which might lose a lot more if the developer was not willing to make an investment here if building only what

was economically feasible. He asked the decision makers to look at the total project, from the developer standpoint.

(1) Motion: to close the public hearing, after hearing six speakers

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

Councilmember Grilli wanted to hear from the City Manager on why a development agreement was good for the City. City Manager Tom Williams replied the City was getting infrastructure and improvements up front, so then the City did not need to do a Request for Proposals, collect fees, finance and build those. This was a good quality project and the agreement would help to facilitate it getting built, near the new BART station. The City risked tolerance with any decision and here there would be a lower risk to the City as a result, with the development agreement.

Vice Mayor Montano felt the one issue she had was in consistency, and that the city should abide by its ordinance. She asked why she should make exceptions for one group and not another. The City should not give up \$3.8 million with this agreement and she believed the building of the bridge overcrossing was at risk of not being funded.

Councilmember Giordano thanked her colleague for the question to the City Manager. The legal issue here was a fascinating topic. She asked if state law trumped municipal law, and then there would be an issue in court to be heard.

Councilmember Barbadillo commented on law and said this was all about good planning, following ordinances and resolutions, getting the TASP area built while trying to bend and carve exemptions. He sought integrity of rules and ordinances of the City.

Councilmember Grilli noted this was approved by the Planning Commission. Developer agreements had been approved by City Council before, so this request was not new. Ordinances and staff could be flexible and that was good for the community. The City needed a signature project at the BART entry so she supported this recommendation.

Mayor Esteves felt this project was getting credit to move ahead and he asked if other should get credit moving ahead quickly. Timing was part of any business plan while fees can and do go up. He commented on building permit timing and when fees applied. He did not think fees should be negotiated. There would be legal issues, while the City's ordinances were written to be defensible.

City Attorney Ogaz read aloud the title of Ordinance No. 38.819, "An Uncodified Ordinance of the City Council of the City of Milpitas approving a Development Agreement by and between the City of Milpitas and SCS Development Co., Amalfi Milpitas LLC and DPD Investments LLC, relating to the Citation I (Amalfi I and Amalfi II) and Citation II (The Edge) and Mixed-Use Development Projects."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.819

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

(3) Motion: to introduce Ordinance No. 38.819 in order to approve a development agreement between City of Milpitas and SCS Development Co., Amalfi Milpitas, LLC, and DPD Investments, LLC

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion failed by a vote of: AYES: 2 (Giordano, Grilli)  
NOES: 3

## UNFINISHED BUSINESS

### 2. Odor Report

City Engineer Steve Machida gave an oral report with handouts of his presentation. He described the number of complaints to both the City's hotline number and the Bay Area Air Quality Management District's odor hotline, with a noticeable spike recently in January. Mr. Machida detailed various meetings staff and the public had attended, many related to plan for expansion of the Newby Island landfill.

Mayor Esteves asked staff to provide additional information regarding the outcome of the City of San Jose Planning Commission where the expansion of the Newby Island Landfill was considered recently. Meeting minutes could provide the information he sought and staff agreed.

Mr. Machida described the protocol followed by BAAQMD when a complaint arrived from a resident. Vice Mayor Montano asked for detailed information on when the composting was scheduled at the landfill.

An Odor Mitigation process was proposed by Republic Services, and to form a South Bay Odor Coalition with stakeholders, to help determine odor sources in this area.

Councilmember Grilli asked if it would be to the advantage of the City to participate in funding a study on finding the source of odors. City Manager Williams explained that City of San Jose oversaw regulatory oversight of the landfill, and it may direct (or not) to condition Republic Services to do an odor study.

Councilmember Giordano noted there was lots of press about this subject lately. She asked the City Manager what message to provide to residents on this issue. Mr. Williams replied that to eliminate odor so that it did not impact residents was the objective.

Mayor Esteves encouraged residents to be engaged and to speak out on the expansion plan for the Newby Island landfill, which would have a long term impact.

Motion: to receive an oral update report on odor issues from the City Engineer

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORT OF COMMISSION

### 5. Arts Commission: Utility Box Painting

Recreation Services Director Renee Lorentzen reviewed the Arts Commission plan to implement a project to paint on the outsides of twelve electrical utility boxes throughout the City. She displayed a map of the locations with the sketch of the art planned to be painted on each particular box. Cost to the City included \$1000 for supplies and the remainder for an honorarium to each student painter and the teacher.

Councilmember Giordano felt this project represented the biggest bang for the buck, with Council only allocating money for the material (paint) as a big asset.

Councilmember Grill asked about the timeframe for implementation of the painted boxes. Staff explained it would start in mid-March and planned completion at the end of April.

Vice Mayor Montano very much liked the display of Milpitas history throughout these sketches. She did not prefer the surreal art proposed for the box at Jacklin and Hillview and suggested instead historical sites such as Ford Motor Company, United Auto Workers union hall or the Alviso Adobe.

Mayor Esteves liked the art work to be shown around the city. He inquired if the artists' names would be displayed at the bottom, and staff said yes. Also, the city staff would be prepared to handle any graffiti that showed up on these boxes.

After discussion of the box painting project, both Mayor Esteves and Vice Mayor Montano stated that they both sought a City Council ordinance on a public art requirement for all future development projects. They requested staff to come back to City Council with that.

Motion: to approve the twelve Electrical Box Painting Art project designs at the dozen locations specified throughout the City of Milpitas for a total project budget of \$5,200

Motion/Second: Councilmember Giordano/Councilmember Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

## **NEW BUSINESS**

6. Crime Report This item was removed from the agenda, to be heard at a future date.

## **RESOLUTIONS**

7. Resolution Vice Mayor Montano inquired about terminology of the agenda item title. Staff clarified it was for "Cape Seal" and Slurry Seal" two processes done for street resurfacing work.

Motion: to adopt Resolution No. 8447 granting initial acceptance of the Street Resurfacing Project 2015 Street Cape and Slurry Seal, Projects No. 4275 and No. 3412, subject to a one-year warranty period, and reduction of the faithful performance bond to \$340,862; and grant authorization to the City Engineer to issue the notice of final acceptance after the one-year warranty period and to release and discharge the performance bond without further Council action

Motion/Second: Vice Mayor Montano/Councilmember Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

## **AGREEMENTS**

12. Amendment to Agreement with H.T. Harvey & Associates Vice Mayor Montano asked about the Task No. 1 to be completed on this project and the jurisdiction of the identified creeks. Staff clarified those creeks were located within City boundaries, and not within the Santa Clara Valley Water District.

Motion: to approve Amendment No. 1 to the consultant agreement with Triple HS, Inc. doing business as H.T. Harvey and Associates for Project No. 3700 and increase the agreement amount by \$21,055

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

13. Agreement with NBS

Vice Mayor Montano asked what this consulting group was contracted for. City Engineer Machida responded that the consultant would take a look at the annual Engineering Reports that were required for the two Landscape Lighting and Maintenance Districts in the City (not related to the Community Advisory Commission trees project). These were prepared each year for review of the annual assessments adopted each year.

Motion: (1) to approve consultant agreement with NBS Government Finance Group in the not-to-exceed amount of \$29,900, and for a term from Feb 17, 2015 to Feb 18, 2016 for updates to the annual Lighting Landscape Maintenance Assessment District Engineer's Reports; and (2) to approve a budget appropriation in the amount of \$29,900 from the LLMD Funds 235 and 236 to the Engineering Budget

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**JOINT MEETING**

**CITY COUNCIL and PUBLIC FINANCING AUTHORITY**

FA1 Call to Order

The Joint Meeting was called to order at 11:00 PM with all members present.

FA2 Approve Agenda

Motion: to approve the agenda of the joint meeting and consent calendar item

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

\* FA3. Resolution to Update Officers

Adopted City Council Resolution No. 8451 and Milpitas Public Financing Authority Resolution No. PFA 17 authorizing investment of monies in the Local Agency Investment Fund and updating officers' information.

**ADJOURNMENT**

Mayor Esteves adjourned the joint meeting at 11:00 PM.

**The foregoing minutes were approved, as amended, by the Milpitas City Council on March 3, 2015.**

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**Mary Lavelle**  
**Milpitas City Clerk**